

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

JIMMY L. BENNETT
Plaintiff

v.

CENTRAL MUTUAL INSURANCE
COMPANY, CRUSE AND DICE
INSURANCE AGENCY AND JERRY LEE
GERRON
Defendants

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CIVIL ACTION NO. _____

NOTICE OF REMOVAL

Defendant, Central Mutual Insurance Company (hereinafter referred to as “Central”), hereby files this Notice of the Removal of this case from the 189th Judicial District Court of Harris County, Texas, to the United States District Court for the Southern District of Texas, Houston Division, pursuant to 28 U.S.C. § 1441 and 1446(b) and would show the Court as follows:

1.

Central has been sued in Cause No. 2016-26309, entitled “Jimmy L. Bennett v. Central Mutual Insurance Company, Cruse and Dice Insurance Agency and Jerry Lee Gerron”, currently pending in the 189th Judicial District Court of Harris County, Texas. That lawsuit was originally filed on April 25, 2016 in the 189th Judicial District Court of Harris County, Texas.

2.

Central first received notice of Plaintiff’s lawsuit when Central was served with Plaintiff’s lawsuit on May 18, 2016. Central is filing this notice within thirty days of that date, thereby making this removal timely under 28 U.S.C. § 1446(b).

3.

At the date of commencement of this action and at all pertinent times, Plaintiff is a citizen of the State of Texas, being an individual residing and domiciled in the State of Texas.

4.

At the date of commencement of this action and at all pertinent times, the Defendants to this lawsuit are citizens of the following:

- (A) Central is a citizen of the State of Ohio, being an insurance company incorporated in the State of Ohio, and having its principal place of business in the State of Ohio;
- (B) Cruse and Dice Insurance Agency is a citizen of the State of Texas, being a corporation formed under the laws of the State of Texas, and having its principal place of business in the State of Texas; and
- (C) Jerry Lee Gerron (hereinafter referred to as “Gerron”) is an individual who is a citizen of the State of Texas, being an individual residing and domiciled in the State of Texas.

5.

The citizenship of Cruse and Dice and Gerron is not considered for jurisdictional purposes, as their joinder in this lawsuit is fraudulent, since Plaintiff has no viable cause of action against those Defendants, nor has Plaintiff sufficiently pled such for purposes of keeping this lawsuit from being removed to federal court. There is no sufficient factual or legal basis alleged in Plaintiff’s lawsuit that assert viable claims against Cruse and Dice and Gerron, so as to keep this case from being removed to federal court. This is especially the case under the pleading standard required by the Fifth Circuit in its recent opinion in *Energy Ventures Management, L.L.C. v. United Energy Group*,

Ltd., 818 F.3d 193, 200-01 (5th Cir. 2016). As no viable claims have been pled by Plaintiff against those Defendants Gerron and Cruse and Dice, the citizenship of those defendants would not be considered for jurisdictional purposes. Complete diversity thus exists between Plaintiff and the remaining Defendant, Central, such that diversity of citizenship exists in this matter.

6.

This Court has original jurisdiction of this action under 28 U.S.C. § 1332, and it may be removed to this Court by Central, pursuant to 28 U.S.C. § 1441, it being a civil action wherein the amount in controversy exceeds \$75,000.00, exclusive of interest and costs, as between citizens of different states.

7.

Copies of all the pleadings which have been filed in this action to date and which are attached as Exhibit “A” include the following:

- a. Plaintiff’s Original Petition;
- b. Citation served on Cruse and Dice;
- c. Citation served on Central;
- d. Original Answer of Cruse and Dice;
- e. Original Answer of Central; and
- f. Copy of state court docket sheet.

To the best of Central’s knowledge, no other pleading, process or order has been filed or served in the state court lawsuit referred to above.

Wherefore, Defendant, Central Mutual Insurance Company, prays that this action be removed to this Court from the 189th Judicial District Court of Harris County, Texas and for further

proceedings as may be necessary.

Respectfully submitted,

/S/Russell J. Bowman

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CERTIFICATE OF SERVICE

This is to certify that on June 16, 2016, I electronically filed the foregoing document with the clerk of court for the U. S. District Court, Southern District of Texas, using the electronic case filing system of the court.

I hereby certify that I have served a true and correct copy of the foregoing document as indicated below, on this the 16th day of June, 2016:

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/S/Russell J. Bowman

Russell J. Bowman